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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

M. KATHLEEN BOBERG, Plaintiff and Respondent, v. SHARYN S. PETERSON et al., Defendants and Appellants.	E039661 (Super.Ct.No. RIC 432162) OPINION

APPEAL from the Superior Court of Riverside County. Thomas H. Cahraman, Judge. Affirmed.

Murray & Sabban and Ariel J. Sabban for Defendants and Appellants.

Law Office of James DeAguilera and James DeAguilera for Plaintiff and Respondent.

1. Introduction

The issue in this case is whether Code of Civil Procedure section 426.16, commonly referred to as the anti-SLAPP (strategic lawsuit against public

participation) statute, applies to a trustee's performance of her duties in a nonjudicial foreclosure proceeding. Plaintiff M. Kathleen Boberg filed a lawsuit against Sharyn S. Peterson, Shoshone Services Corporation, and other defendants to set aside a nonjudicial foreclosure sale. Defendants filed an anti-SLAPP motion. The court denied the motion, finding that defendants' conduct did not arise from constitutionally protected activity, as required under the anti-SLAPP statute. On appeal, defendants argue that the trial court erred in denying the motion because their conduct qualified as either speech or petitioning activity. For the reasons stated below, we reject defendants' argument and affirm the judgment.

2. Factual and Procedural Summary

Since 1981, Sky Valley Properties, Ltd. (Sky Valley) owned the subject property, which consists of 50 acres of undeveloped land in Riverside County. The property was held in trust for Sky Valley and the trustee of record was Shoshone Service Corporation (Shoshone). Sharyn S. Peterson is the last remaining owner of Sky Valley. The property was in arrears for unpaid property taxes.

On June 24, 2002, Peterson and Boberg executed an option to purchase the property for a total price of $10,000 and the payment of all taxes and penalties. Based on their handwritten agreement, the option would expire on September 1, 2002. Boberg later sought an extension to March 1, 2003, but the agreement to extend the option was not signed by Peterson.

On March 12, 2003, Sharyn S. Peterson executed a grant deed granting the property to Boberg. Peterson also executed a substitution of trustee and full reconveyance appointing herself as trustee and the Tull Family Trust and other individuals as beneficiaries. Boberg provided Peterson with a handwritten promissory note to pay the agreed price of $10,000 as soon as the title cleared. Boberg paid $15,583.61 in back taxes, but had yet to pay the purchase price.

In November 2004, Peterson and Shoshone, the trustee of record, commenced a nonjudicial foreclosure sale for the property. A trustee's deed was executed in favor of the highest bidder, the Ford St. Trust.

On June 20, 2005, Boberg filed her complaint to set aside the nonjudicial foreclosure sale, cancel the deed, quiet title, and recover damages for slander of title. Her complaint listed the following named defendants: the Ford St. Trust and its trustee, Jerry Stevens; Shoshone Services Corporation; Sky Valley Properties, Ltd. and Sharyn Sue Peterson; Kathleen Healy Dorman; William D. Sherman; the Tull Family Trust; and Stratco, Inc. Boberg alleged that, at the time of the foreclosure sale, Shoshone knew that the property had been conveyed to Boberg and it no longer had the authority to convey the property to the Ford St. Trust.

Defendants Peterson, Shoshone, and the Tull Family Trust, filed an anti-SLAPP motion to strike Boberg's complaint. The trial court denied the motion on the ground that the lawsuit did not arise out of activity protected under the anti-SLAPP statute.

3. Discussion

Defendants argue that the trial court erred in denying their motion because a trustee's performance of her duties in a nonjudicial foreclosure proceeding is a protected activity under the anti-SLAPP statute.

The anti-SLAPP statute provides that: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) The statute further defines the phrase "any act of that person in the furtherance of the person's right of petition or free speech" to include the following: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e).) Based on these alternatives, if the act occurs in the context of a

public or official proceeding, as stated above in (1), (2), and (3), there is no additional requirement that the protected activity be connected with an issue of public importance. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123.)

The application of the anti-SLAPP statute involves a two-step process: first, a determination of whether the defendant has made the threshold showing that the plaintiff's cause of action is one arising from protected activity under Code of Civil Procedure, section 425.16, subdivision (e); and, second, a determination of whether the plaintiff has shown a probability of prevailing on her claim. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) The pivotal question in this case is whether defendants can establish that a trustee's performance of certain functions in a nonjudicial foreclosure constitutes protected activity—i.e., an exercise of her right to speech or her right to petition the government for redress of grievances.

As to this specific question, it appears that defendants have changed their argument from the one presented in their opening brief to the one offered in their reply. As will be discussed in greater detail below, both arguments rely on incorrect premises or assumptions. In their opening brief, the defendants argue that they were exercising their *right to speech* because the foreclosure statute (Civ. Code, § 2924, subd. (d)) declares that the procedures involved are "privileged communications" for purposes of the litigation privilege (Civ. Code, § 47), and, based on the congruence between the litigation privilege and the anti-SLAPP

statute, their conduct also qualified as protected activity under the anti-SLAPP statute. In *Flatley v. Mauro* (2006) 39 Cal.4th 299, however, the California Supreme Court held that the statutes are not sufficiently similar to draw this type of analogy. *Flatley* was decided after defendants filed their opening brief but before they filed their reply brief.

In their reply, defendants argue that they were exercising their *right to petition* the government for redress of grievances. Their modified argument is that, a trustee's performance of her duties in a nonjudicial foreclosure, as an official proceeding authorized by statute, also falls within the scope of protected activity under the anti-SLAPP statute. In a *nonjudicial* foreclosure sale, however, the trustee has opted not to petition the courts for redress of grievances. Although a nonjudicial foreclosure is an alternative to a judicial proceeding, defendants have failed to justify an extension of anti-SLAPP protection to activity that is by definition outside the scope of the statute's reach. It is not enough to show that the case involves an official proceeding authorized by law. Defendants also must show that their conduct amounts to an exercise of a constitutional right, specifically, the right to speech or the right to petition the government for redress of grievances. We turn now to an explanation of these conclusions.

A. General Rules Governing a Nonjudicial Foreclosure

A foreclosure sale is a method for recovering a debt or enforcing a right secured by a mortgage or deed of trust. (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1236.) A foreclosure may be either judicial or

nonjudicial. "In a judicial foreclosure, if the property is sold for less than the amount of the outstanding indebtedness, the creditor may seek a deficiency judgment, or the difference between the amount of the indebtedness and the fair market value of the property, as determined by a court, at the time of the sale. [Citation.] . . .

"In a nonjudicial foreclosure, also known as a 'trustee's sale,' the trustee exercises the power of sale given by the deed of trust. [Citation.] Nonjudicial foreclosure is less expensive and more quickly concluded than judicial foreclosure, since there is no oversight by a court, '[n]either appraisal nor judicial determination of fair value is required,' and the debtor has no postsale right of redemption. [Citation.] However, the creditor may not seek a deficiency judgment. . . ." (*Ibid*.)

A nonjudicial foreclosure is governed by statute. "Civil Code sections 2924 through 2924k provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust. . . . [¶] The statutory scheme can be briefly summarized as follows. Upon default by the trustor, the beneficiary may declare a default and proceed with a nonjudicial foreclosure sale. [Citations.] The foreclosure process is commenced by the recording of a notice of default and election to sell by the trustee. [Citations.] After the notice of default is recorded, the trustee must wait three calendar months before proceeding with the sale. [Citations.] After the 3-month period has elapsed, a notice of sale must be published, posted and mailed 20 days

before the sale and recorded 14 days before the sale. [Citations.] . . . The property must be sold at public auction to the highest bidder. [Citations.]" (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830.)

Although a nonjudicial foreclosure, by its very nature, is a private transaction, as opposed to a judicial proceeding, the end result is the same. "A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. [Citation.]" (*Moeller v. Lien, supra*, 25 Cal.App.4th at p. 831.)

B. Performance of Duties in a Nonjudicial Foreclosure Sale

The critical consideration in ruling on an anti-SLAPP motion is whether the cause of action arises from the defendant's free speech or petitioning activity. (*Navellier v. Sletten, supra*, 29 Cal.4th at p. 89; *Blackburn v. Brady* (2004) 116 Cal.App.4th 670, 676.) To determine whether the activity in this case falls under one or both of these categories, we first must consider the underlying factual basis for defendants' liability as described in the pleadings and the parties' affidavits. (§ 425.16, subd. (b)(2); *Blackburn, supra*, at p. 676.)

Boberg filed a complaint to set aside the foreclosure sale, cancel the deed, quiet title, and recover damages for slander of title. She alleged that defendants executed a grant deed conveying title to her. She also alleged that defendants later executed and recorded a trustee's deed conveying title for the same property to the Ford St. Trust. Based on the prior conveyance, Boberg claimed that she was the

rightful owner and that defendants lacked the power or authority to sell the property through a nonjudicial foreclosure.

Boberg's sole argument on appeal is that her causes of action did not arise from the nonjudicial foreclosure sale, but from defendants' breach of contract and fraud. Boberg's brief is four pages long and refers to only one case. Unfortunately for Boberg (and for this court, considering the dearth of analysis on the remaining issues in this case), both her complaint and her declaration characterizes defendants' wrongdoing as executing the trustee's deed and conveying the property to the Ford St. Trust absent the proper authority. The wrongful act, therefore, was defendants' performance of their duties as trustees in a nonjudicial foreclosure.

C. Civil Code section 2924, the Litigation Privilege, and the Anti-SLAPP Statute

In their opening brief, as mentioned above, defendants argue that, in performing their duties in a nonjudicial foreclosure, their conduct amounted to an exercise of free speech in the context of an official proceeding authorized by law. They specifically contend that, because Civil Code section 2924 provides that a trustee's performance of her duties in a nonjudicial foreclosure constitutes privileged communications for purposes of the litigation privilege under Civil Code section 47, and because there is a congruence between Civil Code section 47 and Code of Civil Procedure section 425.16, the trustee's acts also constitute an exercise of free speech for purposes of the anti-SLAPP statute. Although the interpretation of language in Civil Code section 47 has been used to interpret

similar language in the anti-SLAPP statute, we cannot draw the broad conclusion that conduct deemed communicative for purposes of Civil Code section 47 automatically qualifies as constitutionally protected speech under Code of Civil Procedure section 425.16.

In 1996, the Legislature amended Civil Code section 2924 to protect trustees in the performance of their duties in a nonjudicial foreclosure. The 1996 amendment added the following language: "The mailing, publication, and delivery of notices as required herein, and the performance of the procedures set forth in this article, shall constitute privileged communications within Section 47." (Stats. 1996, ch. 483, § 1, p. 2865.) The 2006 amendments set this provision apart as its own subdivision with a few changes, none of which are relevant here. The new subdivision (d) states:

"All of the following shall constitute privileged communications pursuant to Section 47:

"(1) The mailing, publication, and delivery of notices as required by this section.

"(2) Performance of the procedures set forth in this article.

"(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure." (Stats. 2006, ch. 575, § ___, p.__.)

The Legislature's rationale for extending the litigation privilege was to protect trustees in the performance of their contractual and statutory duties. The proponents of the original amendment commented, as follows: "Trustees who record and send notices of default and of sale can be vulnerable to defamation suits despite the fact that when the same allegations are made in the context of a judicial foreclosure, they are clearly privileged communications. This appears to be because a nonjudicial foreclosure is a private, contractual proceeding, rather than an official, governmental proceeding or action. Essentially, the required communications of default are the same and made for the same purpose." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1488 (1995-1996 Reg. Sess.) as amended June 26, 1996, p. 2.)

Although the amended statute does not distinguish between communicative and noncommunicative acts, we can infer that the Legislature intended to apply the litigation privilege only to acts that qualify as communicative. Because the litigation privilege also applies to the trustee's "[p]erformance of the procedures set forth in this article" (Civ. Code, § 2924, subd. (d)(2)), the language, if interpreted broadly, may be read to cover not only communicative acts such as sending notices of default and notices of sale, but also other statutorily authorized acts involved in conducting the sale. (See, e.g., Civ. Code, §§ 2924f, subd. (c), 2924g, & 2924h.) Nevertheless, the Legislature's primary concern was the possibility of derivative lawsuits against the trustee for her communicative acts. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1488 (1995-1996 Reg.

Sess.) as amended June 26, 1996, p. 2 [discussing defamation]; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2624 (2005-2006 Reg. Sess.) as amended June 22, 2006, pp. 11-12 [discussing libel and slander].) The Legislature appears to have assumed as given that the litigation privilege applies only to communicative acts, which is consistent with how the courts have applied the litigation privilege under Civil Code section 47. The threshold issue in such cases is whether the acts were communicative. (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 345.)

In assuming that their acts were communicative (at least, in their opening brief), defendants claim that, because their acts were protected under the litigation privilege under Civil Code section 2924, subdivision (d), their acts also qualify as protected speech under the anti-SLAPP statute. To prove this claim, defendants must show both that (1) the scope of the litigation privilege and the scope of constitutionally protected speech under the anti-SLAPP statute are identical, and (2) the Legislature's designation of certain procedures as "privileged communication" for purposes of the litigation privilege also affects their status for purposes of applying the anti-SLAPP statute.

As to the first requirement, the California Supreme Court's recent decision in *Flatley v. Mauro, supra,* 39 Cal.4th 299 suggests that the scope of protection under the two statutes is not identical. Although the court's decision rested largely on the illegal nature of the communicative acts in that case (i.e., a letter and

telephone calls extorting money from a well-known entertainer), the decision also addressed a similar argument as the one raised here.

The defendant in *Flatley* argued, "'[a]ll litigation-related speech, lawful or not, is in furtherance of petition or free speech rights.'" (*Flatley v. Mauro, supra,* 39 Cal.4th at p. 320.) In responding to the defendant's argument, the California Supreme Court explained that the litigation privilege and the anti-SLAPP statute are substantively different statutes that serve different purposes. (*Id*. at pp. 322-325.) The court noted that, while the litigation privilege is a substantive rule of law that grants absolute immunity from tort liability for communicative acts made in the context of a judicial proceeding, the anti-SLAPP statute is a procedural device for screening out meritless claims. (*Id*. at p. 324, citing *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 737.) The court also explained that, while the purpose of the litigation privilege is to guarantee access to the courts, the purpose of the anti-SLAPP statute is to protect the valid exercise of a person's constitutional rights of free speech and petition from the abuse of the judicial process. (*Flatley, supra,* at p. 324.) Based on these differences, the court concluded that, "Civil Code section 47 does not operate as a limitation on the scope of the anti-SLAPP statute." (*Id*. at p. 325.) Therefore, while some communicative acts may fall under both statutes, defendants cannot show that all communications that are protected as privileged under Civil Code section 47 also qualify as an exercise of free speech under Civil Code section 425.16.

Moreover, under the normal rules for applying the litigation privilege, a trustee's performance of her duties in a nonjudicial foreclosure sale is not a communicative act made in a judicial or quasi-judicial proceeding. (See *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 830.) The Legislature, instead, has *deemed* that such acts constitute "privileged communication" for purposes of Civil Code section 47. (Civ. Code, § 2924, subd. (d); see also *Wilton v. Mountain Wood Homeowners Assn., Inc.* (1993) 18 Cal.App.4th 565, 570.) The Legislature's extension of this statutory privilege has no effect on whether a person's act qualifies as a valid exercise of her constitutional rights.

The purpose of the anti-SLAPP statute is to screen out lawsuits brought to chill the valid exercise of a person's constitutional rights of free speech and petition. (See Code Civ. Proc., § 425.16, subd. (a).) Despite the Legislature's clear purpose, defendants ask that we apply Civil Code section 2924, subdivision (d), to bypass the requirement that the act must be a valid exercise of a person's constitutional rights, as defined in Code of Civil Procedure section 425.16, subdivision (e). We decline. Because the scope of the litigation privilege and the scope of the protection afforded under the anti-SLAPP statutes are not identical, defendants must affirmatively show that their conduct qualifies as constitutionally protected activity.

D. Right of Free Speech and Right of Petition

Code of Civil Procedure section 425.16 requires that the cause of action arises from an act in furtherance of defendants' right of petition or free speech.

(Code Civ. Proc., § 425.16, subd. (b)(1); *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1003.) As mentioned earlier, the statute describes the types of activities protected under the statute, including any written or oral statement or writing made before or in connection with a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law. (Code Civ. Proc., § 425.16, subd. (e).) Assuming that a nonjudicial foreclosure sale is an official proceeding authorized by law, the question is whether the execution of a trustee's deed of sale and conveyance of the property qualify as statements or writings within the meaning of the statute.

Boberg's cause of action arose from defendants' alleged act of executing a deed of trust and conveying the property without the proper authority. Although executing a deed of trust may involve filling out and signing a document, the conduct does not fall within the purview of the anti-SLAPP statute. Defendants' conduct was primarily noncommunicative—i.e., the sale of property by nonjudicial foreclosure.

In addition to relying on the erroneous assumption that acts protected under the litigation privilege also are protected under the anti-SLAPP statute, defendants also mischaracterize Boberg's allegations. Boberg alleged that, "The sale was improperly held and the Trustee's Deed was wrongfully executed, delivered, recorded in that at the time of the sale and execution and conveyance and recordation of the Trustee's Deed plaintiff Kathleen Boberg was the rightful

owner of the property by virtue of the Grant Deed which was executed on or about March 12, 2003 (Exhibit A) and Shoshone Services Corporation was no longer the Trustee and without power to issue a Trustee's Deed. As a result plaintiff has been wrongfully deprived of title of the property and its beneficial use and enjoyment." Based on this language, defendants contend that Boberg's cause of action arose from the mailing, publication, and delivery of notices, and the performances of the procedures in a nonjudicial foreclosure. Defendants further contend that, because these activities constituted privileged communications under Civil Code section 47, Boberg's cause of action arose from acts before or in connection with an official proceeding authorized by law, as required under the anti-SLAPP statute.

Defendants' opening argument fails miserably. Boberg's allegations had nothing to do with the mailing, publication, and delivery of notices. While defendants' conduct may have been in the performance of other procedures involved in a nonjudicial foreclosure, defendants fail to show how their acts qualified as written or oral statements made before or in connection with an official proceeding. A trustee's sale ". . . consists merely of offers and the acceptance of the highest bid made according to certain requirements without any determination based on the exercise of one's free speech or petition rights. As such, it concerns a business dealing or transaction somewhat analogous to the unprotected activity of bidding on public contracts." (See *Blackburn v. Brady* (2004) 116 Cal.App.4th 670, 677 [finding the defendant's offer at a sheriff's sale

did not constitute a written statement in an official proceeding authorized by law].) As discussed above, the fact that the Legislature deemed such activities as protected communications for purposes of the litigation privilege does not satisfy the requirement that they qualify as constitutionally protected activity for purposes of the anti-SLAPP statute.

Defendants' argument in their reply brief also fails to establish that their conduct amounted to a valid exercise of their constitutional rights. Instead of maintaining that their acts were communicative, defendants now argue that a trustee's performance of her duties in a nonjudicial foreclosure amounts to petitioning activity. Defendants' explain: "…the pursuit of creditor remedies is an aspect of one's right to petition the government for redress of grievances. [Citation.] As such, an alternative governed by statute, and designed to effectuate the same purpose (without imposition on the judicial system), is also within the scope of the right to petition. [Citations.]"

The cases cited by defendants fail to support their argument. The first case cited does not establish that the pursuit of creditor remedies is an aspect of one's right to petition the government for redress of grievances. The decision refers to an individual's right to seek compensation against the government for individual wrongs. (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 533-534.) The decision makes no reference to creditors or the remedies available to them.

The other case cited by defendants does not establish that the use of a nongovernmental procedure constitutes an exercise of the right to petition. In the

cited case, the court merely concluded that the constitutional right to petition justifies a similar procedure in another context. (*Greene v. Hawaiian Dredging Co*. (1945) 26 Cal.2d 245, 251.) Defendants fail to provide authority for their position here, namely, that such alternative procedures actually constitute a valid exercise of a person's constitution right to petition the government for redress of grievances.

The right to petition is a particular constitutional right that generally involves pursuing a remedy afforded by a branch of government. It includes filing a lawsuit, seeking administrative action, and lobbying or testifying before a legislative or executive body. (See *Briggs v. Eden Council for Hope & Opportunity, supra,* 19 Cal.4th at p. 1115; see also *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 822, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5; *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 468-469, 474 [lien claims before the Workers' Compensation Appeals Board]; *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 101 [claims to various regulatory and law enforcement agencies]; *ComputerXpress, Inc. v. Jackson, supra,* 93 Cal.App.4th at p. 1009 [complaint filed with the Securities and Exchange Commission and posted on the Internet]; *Dove Audio v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 780 [letters to the Attorney General].)

Although defendants appear to have shifted gears in arguing that their conduct amounted to petitioning activity, they nevertheless rely on a case that involved constitutionally protected speech. In *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, the California Supreme Court addressed the question of whether medical peer review hearings qualified as official proceedings authorized by law. Medical peer review is mandated under Business and Professions Code section 805 et seq. The court held that the procedure was an official proceeding authorized by law, as required under the anti-SLAPP statute. (*Kibler, supra,* at p. 203.) In *Kibler,* there was no dispute as to whether the conduct was an exercise of free speech or petition. The plaintiff's lawsuit arose out of a disciplinary recommendation by the hospital's peer review committee. (*Kibler, supra,* at p. 196.)

As stated above, it is not enough to show that the act occurred in connection with an official proceeding authorized by law. Defendants also must show that the act itself was an exercise of a constitutional right. The anti-SLAPP statute does not afford protection in the absence of such speech or petitioning activity. Although the anti-SLAPP statute must be construed broadly, the Legislature did not intend to apply the statute to purely private transactions. (See *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 932 [bidding and contracting on a construction project]; *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 285 [submitting fraudulent claims]; *Ericsson GE Mobile*

Communications, Inc. v. C.S.I. Telecommunications Engineers (1996) 49 Cal.App.4th 1591, 1601-1602 [performing contractual obligations], disapproved on another ground in *Briggs v. Eden Council for Hope & Opportunity, supra*, 19 Cal.4th at p. 1123, fn. 10.)

In this case, there was no showing that defendants were engaged in constitutionally protected speech or petitioning activity. Boberg's lawsuit arose from a purely private transaction—i.e., defendants' execution of a deed of trust pursuant to a nonjudicial foreclosure sale. Boberg alleged that defendants inappropriately conveyed the property to the Ford St. Trust despite the earlier grant deed conveying the property to her. We conclude that the trial court properly found that defendants failed to make the threshold showing that Boberg's lawsuit arose from constitutionally protected activity.

4. Disposition

We affirm the trial court's judgment. Plaintiff shall recover her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Ramirez
P.J.

We concur:

s/McKinster
J.

s/Miller
J.